



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

1415 Melody Lane, Bisbee, Arizona 85603

(520) 432-9240

Fax 432-9278

Carlos De La Torre, P.E., Director

MEMORANDUM

TO: Cochise County Planning and Zoning Commission
FROM: Keith Dennis, Senior Planner
For: James E. Vlahovich, Planning Director
SUBJECT: Docket SU-11-01 (Ballator)
DATE: February 1, 2011 for the February 9, 2011 Meeting

REQUEST FOR A SPECIAL USE

Docket SU-11-01 (Ballator): The Applicant seeks a Special Use authorization from the Planning and Zoning Commission for a Cultural, Nature or Historic Exhibit, per Section 607.31 of the Zoning Regulations. A Bed and Breakfast exists on the property (Ash Canyon B&B). The Special Use would legitimize the use of the property by bird watchers, some of whom are B&B guests, as well as to members of the public not staying at the B&B. The Applicant proposes no new construction as part of the Application.

The subject parcel (Parcel No. 104-21-022) is located 5255 E. Spring Road in Hereford, AZ. The Applicant is Mary Jo Ballator of the same address.

I. DESCRIPTION OF SUBJECT PARCEL AND SURROUNDING USES

Size: 6.54 Acres
Zoning: RU-4 (Rural, 1 Dwelling per 4 Acres)
Growth Area: Category D (Rural Growth Area)
Plan Designation: Rural-Density Residential
Area Plan: Sierra Vista Sub-Watershed, Southern San Pedro Valley Area Plan
Existing Uses: Single Family Residence, Bed and Breakfast Inn, Bird-Watching Exhibit
Proposed Uses: Unchanged

Surrounding Zoning

Relation to Subject Parcel	Zoning District	Use of Property
North	RU-4	Rural Residential
South	RU-4	Rural Residential
East	RU-4	Rural Residential
West	RU-4	Rural Residential

II. PARCEL HISTORY

1994 – Permit issued for a single-family residence and accessory structures;
2002 – Violation issued for Bed and Breakfast without a permit;
2003 – Permit issued to legitimize B&B.

III. SPECIAL USE REQUEST AND BACKGROUND

Mary Jo Ballator has hosted bird watchers on her property since 1996. In those early days, birding on the Ballator property was an “on-your-own” affair. One or two weeks during the spring, she would open her gates and allow birders to observe wildlife on the property.

In the summer of 2002, the Applicant began to take the “birding on-your-own” activity in a more formal direction, with longer periods during which the site was open to birders, and by accepting donations. This was also the year that the Ash Canyon Bed & Breakfast opened. The following year Ms. Ballator obtained the required B&B permit.

In the summer of 2009, due to a lack of consistency with regard to donations, the Applicant began charging a \$5.00 admission fee to birders seeking to use the yard for bird watching. When she was asked whether the operation was permitted by the County, Ms. Ballator contacted the Community Development Department. She was advised by staff that the use is considered a “Cultural, Nature and/or Historic Exhibit,” which is allowed in a Rural Zoning District by Special Use (per Section 607.31 of the Zoning Regulations). The Applicant volunteered to undertake the public process necessary to legitimize the use, and now requests Special Use authorization from the Commission.



Aerial view of the project site and adjacent properties. Until recently, birder parking was allowed along the cleared area South of Spring Road (circled).

IV. COMPLIANCE WITH SPECIAL USE FACTORS (SECTION 1716.02)

Section 1716.02 of the Zoning Regulations provides a list of 10 factors with which to evaluate Special Use applications. Staff uses these factors to help determine whether to recommend approval for a Special Use Permit, as well as to determine what conditions and/or modifications may be needed. Eight of the 10 criteria apply to this request. The project complies with four of the eight applicable factors as submitted; with the recommended Conditions of Approval and requested modifications to site development standards, the project would comply with each of the eight criteria.



Two views of the birding exhibit areas.



A. Compliance with Duly Adopted Plans: Complies (See Condition #3)

This Factor reflects the extent to which a proposed project is consistent with policies in applicable “master development plans, transportation plans or other land use plans if any have been adopted for the area encompassing the Special Use.” The project site is within the Sierra Vista Sub-Watershed Plan area, as well as the. The Applicant does not propose any new construction, but if this changes in the future, Condition #3 would require compliance with the Sub-Watershed Plan for new water fixtures.

The project site is also within the boundaries of the Southern San Pedro Valley Area Plan. The Plan policies specifically reference nature exhibits as an encouraged land use type. The layout of the site, the architectural style and color scheme of the existing structures on the site also comply with the Area Plan design standards.

B. Compliance with the Zoning District Purpose Statement: Complies

The project would comply with Section 601.05 of the Zoning Regulations, which supports “recreational support services that are compatible with rural living.”

C. Development Along Major Streets: Not Applicable

The project site is approximately one-half mile West of the Turkey Track Road / Highway 92 intersection. The project would not result in the creation of any new points of access to any street.

D. Traffic Circulation Factors: Complies

The Comprehensive Plan Transportation Policies (Section 102.B.3) suggest that non-residential uses should have access to arterial and/or collector roads. The project would not comply with this policy. However, this circumstance could be mitigated by maintaining the road network between the project site and Highway 92. A private maintenance agreement requiring the Applicant to provide basic maintenance along this route has been in place since 2003, when the Bed & Breakfast was permitted. The agreement covers a distance of approximately 900 feet, from the project site driveway to the intersection of Spring Road and Turkey Track Road, where County maintenance begins. A portion of the roadway along the path to Turkey Track is improved with a chip-seal surface.

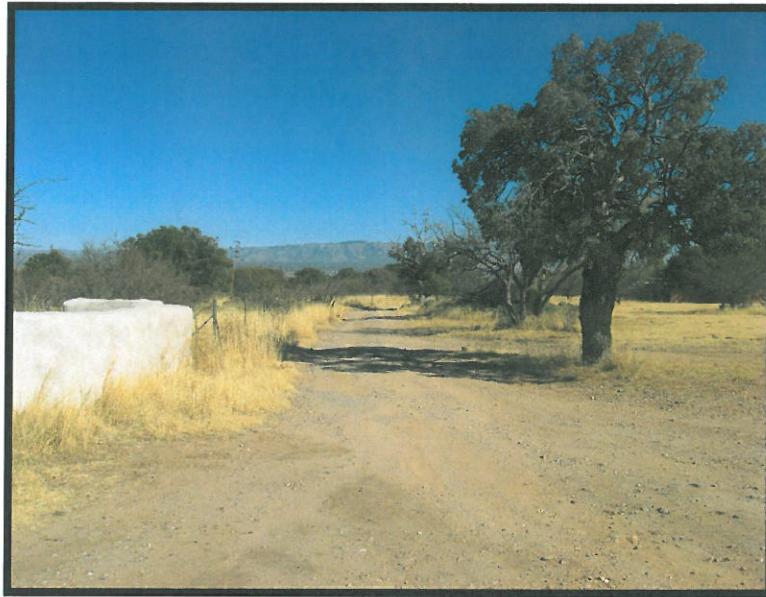
E. Adequate Services and Infrastructure: Complies (Subject to Conditions #2 and #4)

The existing private maintenance agreement ensures a basic level of road maintenance between the project site and the nearest County-maintained road.

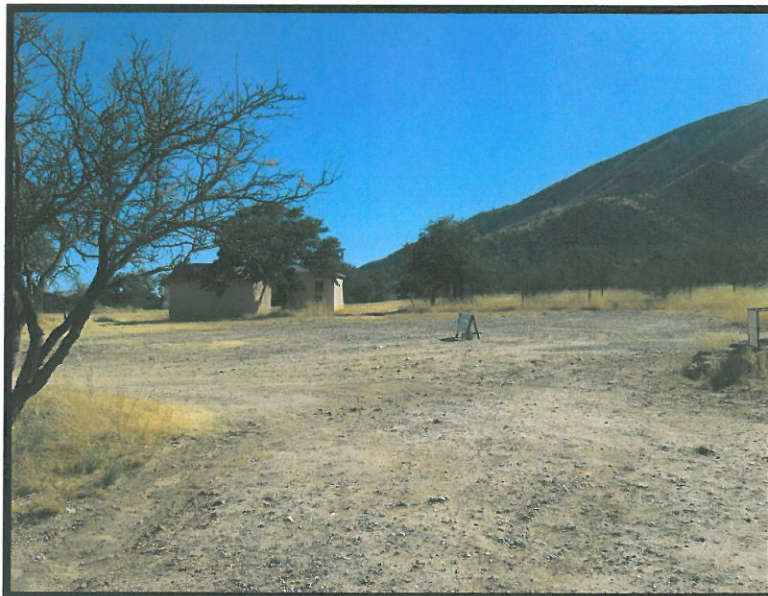
The Applicant intends to increase the capacity of the existing parking area, provide an ADA compliant parking space with a path into the exhibit area, and provide a decomposed granite surface for the parking and driveway area.

The location of the existing and proposed parking spaces, and details regarding ADA-compliance with regard to the parking area and paths through the exhibit area, would benefit from additional consideration and consultation. For instance, there will be head-in parking spaces

along the West side of the property adjacent to the existing parking area, and possibly angled or parallel parking spaces along the East side of the parking area. The internal circulation pattern should be crafted to minimize traffic conflicts that may arise from divergent parking space types and approaches; the pedestrian paths on the site should be made to fulfill the “reasonable accommodation” intent of the Americans with Disabilities Act. Staff therefore recommends, as Condition #2, that prior to permit issuance, the Applicant work with the County Transportation Planner to develop a vehicular and pedestrian circulation plan which would address these concerns. This Condition would provide a site-specific measure of flexibility for the creation of such a plan.



Above: Looking East along Spring Road from the Ash Canyon B&B entrance. Below: Southward view from the parking area. The sign in the background directs traffic to park on the project site, and not on the adjacent property.



At the present time, the project site does not provide restroom facilities for customers. The Applicant has informed customers of this with signage on the property, and on the Ash Canyon B&B website. Section 1716.03.E of the Zoning Regulations allows the Department to recommend reasonable requirements for facilities to address public health and adequate infrastructure for Special Uses. Condition #4 would require the Applicant to provide sanitary facilities for customers; prior to permit issuance, the site plan would have to be revised to show the location of the restroom facilities and the path to those facilities.

The Applicant has expressed that providing an on-site restroom would constitute a financial hardship. Condition #4 would allow portable restroom units to be used in lieu of permanent facilities for a period of one year, beginning at the date of permit issuance.

F. Significant Site Development Standards: Complies (Subject to Condition #1 – See Requested Modifications to Site Development Standards)

The site plan, as submitted, contains a number of minor deficiencies. Condition #1 would require a new site plan, which meets the applicable regulations, prior to issuance of a permit.

The Applicant has asked for a waiver of the requirement that driveways to parking areas be clearly defined with entrance and exit lanes (Section 1804.06.F). The driveway entrance runs along the North side of Spring Road for a distance of approximately 45 feet, providing adequate space for ingress and egress. This request is intended to provide greater flexibility with regard to the circulation plan which would be required by Condition #2.

The Applicant also requests a Modification to the standard which requires, per Section 1804.07.D, that the parking and driveway areas be surfaced with a two-inch deep gravel surface treatment. The Applicant instead proposes to apply a treatment of decomposed granite which would meet the intent of the standard, but which would not necessarily reach a depth of two inches. Attachment E provides the Applicant's modification requests, along with the rationale for each.

G. Public Input: Complies

The Applicant completed the required Citizen Review Report prior to submitting the Application; the Department published the required legal advertizing, posted the site and notified property owners by mail.

The Applicant's Citizen Review elicited a mixture of support, sometimes qualified support, as well as some opposition. Some neighbors, for example, sought to condition their support upon suggested improvements to Turkey Track Road or to an improved parking plan for the project site. Attached to this Memo are responses from the public, as well as the Applicant's responses to some of the objections from neighbors. One of the more common objections to the project concerns the parking plan. Some neighbors expressed concern over the fact that until recently, the Applicant allowed visitors to park on the property across Spring Road to the South. This practice has since been discontinued, and the Applicant has notified neighbors as well as customers that parking is prohibited on the adjacent property.

Section 1716.02.G of the Zoning Regulations states that, if neighbors raise concerns about a project, "it is fair to ask if the Applicant has made a reasonable effort to address these concerns

through the Citizen Review process.” The Applicant’s attempts to mitigate neighbors’ objections demonstrate compliance with this Special Use factor.

The Citizen Review effort also resulted in 17 letters in support of the project, from as near as Hereford, to Tucson, as well as from Washington, Iowa and Minnesota, Louisiana, and California. Cochise County is renowned for its nature-based tourism opportunities, and is particularly well-known as a birdwatching destination. These letters in support of the project serve to illustrate that fact. Some of these letters of support come from local nature or birding-specific nature tours in the Hereford and Tucson areas.

H. Hazardous Materials: Not Applicable

I. Off-site Impacts: Complies

The most common off-site impact related to the birding exhibit would be traffic. During the height of the birding season (Spring through Autumn), the Applicant estimates a maximum of 12 vehicles per day. The Questionnaire states that “on three occasions only, a 50-passenger bus from Country-Wide Tours has brought groups of birders to the property.” Ms. Ballator indicates that she intends to prohibit bus traffic to the site in the future, as a means of addressing neighbors’ traffic concerns.

The attached Transportation Planner Memo addresses traffic concerns, comparing the Applicant’s traffic estimates with the International Traffic Engineer’s Manual trip generation estimates (See Attachment D). The trip generation analysis provided in the Memo indicates that the Applicant’s estimates and the ITE estimates are similar, and that “trip generation for this proposed use is occasionally expected to be slightly above the rates for any single family residential unit in this type of area.”

J. Water Conservation: Complies (Subject to Conditions #3 and #4)

Although the project is within the Sierra Vista Sub-Watershed and is therefore subject to the policies in the Sub-Watershed Plan, the Applicant proposes no new construction. If the Commission applies Condition #4 to the Special Use, permanent sanitary facilities would eventually be required on-site. When and if that were to occur, Condition #3 would require compliance with the policies provided in the Sierra Vista Sub-Watershed Plan.

V. PUBLIC COMMENT

Staff mailed notices to property owners within 1,500 feet of the subject property, posted the property as required, and published a legal notice on January 20, 2011. Within the 1,500-foot notification buffer, staff has received six letters from neighboring property owners or their representatives opposing the request, and three in support. Support and opposition in these letters is sometimes difficult to determine. Some neighbors have expressed unqualified support, while others have expressed “conditional” support. The same is true for some letters nominally opposing the project. Other letters do not seem to fall into either support or opposition. Finally, 11 letters of support for the project have also been received from tourists and neighbors outside the buffer area. Correspondence from the public in response to the Citizen Review process, and from staff mailings, are attached to this Memo (Attachments F and G).

VI. SUMMARY AND CONCLUSION

Factor in Favor of Allowing the Special Use

1. With the recommended conditions, the project would comply with each of the eight applicable Special Use evaluation factors.
2. The Applicant has demonstrated a willingness to work with neighbors to address their concerns, by taking measures such as applying parking and proposing large vehicle access restrictions (buses).
3. The Applicant has in place a Private Maintenance Agreement requiring basic maintenance along Spring Road to the Turkey Track Road intersection.
4. Three neighbors have expressed support for the project from within the 1,500-foot notification area.
5. The operation has also received 17 letters of support from Hereford and Tucson residents and nature tour operations, as well as bird enthusiasts from other states. These letters indicate the importance of birding to the local tourism economy, as well as broad support for this operation in particular.

Factor Against Approval

1. The Department received opposing correspondence from six neighboring property owners. The most common concerns expressed by these neighbors were the condition of Turkey Track Road, and the parking plan for the birding site.
2. Although passenger vehicles make up most of the birding-related traffic, nature tourism services have been known to bring Econoline-class vans to the site. Larger passenger buses and RVs have also visited the site, along the narrow Spring Road travelway. It is likely that there will be occasional visits from larger vehicles to the site, and that it would be difficult if not impossible to completely restrict such traffic to the property.
3. The Applicant does not provide dedicated restroom facilities on the site. Without Condition #4, adequate sanitary facilities would not be provided on the site.

VII. RECOMMENDATIONS

Based on the factors in favor of approval, staff recommends **conditional approval** of the Special Use request, subject to the following conditions:

1. Within thirty (30) days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12 months of approval, including a completed joint permit application. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire, and appropriate

fees. A permit must be issued within 18 months of the Special Use approval, otherwise the Special Use may be deemed void upon 30-day notification to the Applicant.

2. Prior to permit issuance, the Applicant shall work with the County Transportation Planner to develop a vehicular and pedestrian circulation plan that promotes orderly and safe vehicular and pedestrian traffic on site, and which satisfies ADA accessibility requirements.
3. For any future construction involving water utilities, the Applicant shall ensure that new water fixtures comply with the policies of the Sierra Vista Sub-Watershed Water Conservation Plan.
4. ADA compliant sanitary facilities shall be required for this project. Prior to permit issuance, the Applicant shall revise the site plan to provide such facilities. The Applicant may utilize portable facilities to meet this requirement for up to one year, beginning at the date of permit issuance; within a year of the initial permit issuance, the Applicant shall submit a non-residential permit to construct site-built, ADA-compliant sanitary facilities.
5. It is the Applicant's responsibility to obtain any additional permits, or meet any additional conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations.
6. Any changes to the approved Special Use shall be subject to review by the Planning Department and may require additional modification and approval by the Planning and Zoning Commission.

Sample Motion: *"Mr. Chairman, I recommend approval of Docket SU-11-01, with the conditions of approval as recommended by Staff, and with the modifications to site development standards as requested by the Applicant; with the factors in favor of approval constituting findings of fact."*

VIII. REQUESTED MODIFICATIONS TO SITE DEVELOPMENT STANDARDS

The Applicant has requested to following waiver to site development standards:

1. That the requirement, per Section 1804.06.F, that driveways to a parking area be limited to defined entry and exit driveways, be waived.
2. That the requirement, per Section 1807.04.D, that the driveway and parking areas be treated with a 2-inch deep gravel surface, be modified to allow less than 2 inches.

IX. ATTACHMENTS

- A. Special Use Application
- B. Location Map
- C. Site Plan
- D. Transportation Planner's Comments
- E. Requested Modifications to Site Development Standards
- F. Citizen Review
- G. Public Comment
- H. Support and Protest Map